XI-HC-78

A.F.R. (42)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	APPELLANT: (In jail)	Brajesh Kumar Singh, S/o Kedarnath Singh, Aged about 32 years, Unemployed, Resident at : Baikunth Nagar, Camp No.2, Bhilai – 490 001, District: Durg (C.G.)
		- Versus -
	RESPONDENT:	State of Chhattisgarh, Through Officer-in-Charge, Police Station: Chhaoni, Bhilai, District: Durg (C.G.)

Present:

Mrs. Indira Tripathi, counsel for the appellant.

Mr. D.K. Gwalre, Additional Public Prosecutor for the State/respondent.

Division Bench: **Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Dhirendra Mishra, JJ.**

ORAL JUDGMENT

(Delivered on 23rd March, 2007)

L.C. BHADOO, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 18-9-2001 passed by the 4th Additional Sessions Judge, Durg in Sessions Trial No.495/96, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302 & 324 of the I.P.C. sentenced him to undergo imprisonment for life and to

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undergo R.I. for one year and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for three months, respectively.

2. Case of the prosecution is that on the fateful day at about 10 p.m. Jairam (PW-7) was sitting in his grocery shop, his father Gulab Chand (PW-8) & uncle Baijnath (since deceased) were also sitting at the shop, at that time, accused/appellant Brajesh along with his associates was passing through the street while abusing, therefore, Baijnath called them and asked Brajesh as to why he gave threatening to commit the murder of the friend of Raj Kumar on which the accused/appellant replied, who is he to save him, he will commit his murder, and he abused him also in filthy language in the name of mother & sister. Brajesh was persuaded and when he was advised not to indulge in such activities, he took knife from the attire and attacked Baijnath by which Baijnath sustained injuries on back and chest. Brajesh also attacked Jairam with knife, Jairam sustained injuries on stomach. As Baijnath sustained fatal injuries, he was taken to Sector-9 Hospital.

3. Ex.P-13 report of the above incident was lodged by Jairam Gupta. Receiving this report, the Station House Officer, Police Station: Chhaoni registered crime under Section 307 of the I.P.C. When Baijnath was being taken to the hospital, on the way he succumbed to the injuries sustained by him. The Investigating Officer left for the hospital and after giving notice Ex.P-14 to the Panchas, prepared the inquest Ex.P-15 on the body of Baijnath Gupta. During custody, Brajesh gave memorandum Ex.P-1 in which he

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stated that he gave knife to his brother Prakash for keeping the knife and he get the same recovered. Prakash gave memorandum Ex.P-2 that he gave the knife to Keshav Dayal Indoriya. Keshav Dayal gave memorandum Ex.P-3 that he has concealed the knife under ground near the drain. At the instance of Keshav the knife was seized under Ex.P-4. Blood stained soil and plain soil were seized under Ex.P-5. Site plan of the place of occurrence Ex.P-6 was prepared. Post-mortem on the body of Baijnath was conducted by Dr. D.K. Agrawal. He opined that cause of death was respiratory failure due to injury to lung. He prepared the report Ex.P-9. Injuries of Baijnath were examined by Dr. J. Downa and report Ex.P-10 was prepared. Seized articles were sent for chemical examination the Forensic Science Laboratory, Sagar, from where report Ex.P-25 was received and knife Article 'C' was found stained with blood.

4. After completion of investigation, charge sheet was filed against the accused/appellant, Tarakdas, Prakash Meshram, Keshav Dayal Indoriya and also against one Awdhesh Singh in his abscondence in the Court of Judicial Magistrate, First Class, Durg, who in turn, committed the case to the Sessions Judge, Durg, from where learned 4th Additional Sessions Judge, Durg received the case on transfer for trial.

5. The prosecution in order to establish charge against the accused persons examined 14 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution

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evidence and stated that they are innocent, they have been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of counsel for respective parties, convicted and sentenced the accused/appellant as aforementioned, however, acquitted accused persons Tarakdas, Prakash Meshram & Keshav Dayal Indoriya of all the charges.

6. We have heard Mrs. Indira Tripathi, learned counsel for the appellant and Mr. D.K. Gwalre, learned Additional Public Prosecutor on behalf of the State/respondent.

7. Mrs. Indira Tripathi has not disputed the homicidal death of Baijnath. Moreover, the eyewitnesses namely, Jairam (PW-7), Gulab Chand (PW-8) & Raj Kumar Gupta (PW-11) have stated that the accused/appellant attacked the deceased with knife as a result of which he sustained incised wounds/injuries. Dr. D.K. Agrawal (PW-5) has stated that he conducted post-mortem on the body of Baijnath on 30th April, 1987, there were three stab injuries on the back of the deceased, all the injuries were ante-mortem in nature, the injury was extending up to lung and cause of death was respiratory failure due to injury to lung. Therefore, in view of the above ocular and medical evidence it is established that the death of Baijnath was homicidal in nature.

8. As far as involvement of the accused in the crime in question is concerned, conviction is based primarily on the evidence of Jairam (PW-7) – the injured witness & nephew of the deceased, Gulab

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Chand (PW-8) – brother of the deceased and Raj Kumar Gupta (PW-11) – son of the deceased.

9. Jairam (PW-7) has stated in his evidence that at about 9-10 p.m. on 29-4-1987 he was sitting in his grocery shop, Gulab Chand Gupta & Baijnath Gupta, his father & uncle, respectively, were also sitting there, all of a sudden, Brajesh and his associates came abusing, on which his father & uncle enquired from them as to why they are abusing. The accused threatened to kill them. His uncle Baijnath asked Brajesh as to why he gave threatening to commit the murder of his son Raj Kumar. In reply, Brajesh abused and threatened to murder Baijnath and said, he can do anything but "you cannot do anything". The accused ran after his uncle to attack him. Accused Brajesh was carrying Gupti. Awdhesh caught hold of his uncle by hand and accused Brajesh attacked his uncle with Gupti which hit on the back of his uncle. When he tried to intervene, Brajesh attacked him as a result of which he sustained injuries on his stomach and ribs. Thereafter, his uncle was taken to Sector-9 Hospital and he lodged the report Ex.P-13 in the Police Station.

10. The above evidence has been corroborated by Gulab Chand (PW-8). He has stated in his evidence that at the time of incident he was sitting along with his brother Baijnath. Jairam was also there. The accused persons gave threatening to commit the murder of Raj Kumar, they were advised but they did not understand and they ran after Baijnath. Brajesh attacked Baijnath, when Jairam tried to intervene, Brajesh attacked Jairam also and the accused persons

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ran away. Raj Kumar Gupta (PW-11), son of deceased Baijnath, has also corroborated the above evidence.

11. Learned counsel for the appellant argued that in the report Ex.P-13 it has been mentioned that accused Brajesh attacked with knife, whereas in the evidence, Jairam has stated that Brajesh attacked with Gupti. As per recovery at the instance of Keshav, knife has been recovered. Therefore, in view of the above contradiction, the evidence of these witnesses cannot be believed.

12. As the incident was of 29-4-1987 in between 9 & 10 p.m. and the accused attacked all of a sudden, even then, Jairam (PW-7) was able to identify the weapon of offence, that is why he mentioned name of the weapon as knife in the first information report Ex.P-13, however, his evidence was recorded on 28-8-1997 that is about 10 years after the incident, therefore, there is every likelihood that such a discrepancy may occur, as such, much importance cannot be attached to this contradiction.

13. Learned counsel for the appellant also argued that in this case no independent witness has supported the case of the prosecution and all the witnesses are closely related, therefore, their evidence cannot be believed.

14. Settled law on the point is that the evidence of related witnesses cannot be disbelieved merely on the ground that they are related to the victim. The Court while appreciating their evidence is required to scrutinize the evidence with care and circumspection and the Court has to have a close scrutiny in order to ascertain truthfulness

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of their evidence, regarding their witnessing of crime. The evidence of these three witnesses namely, Jairam (PW-7), Gulab Chand (PW-8) & Raj Kumar Gupta (PW-11) is consistent and in cross-examination of these witnesses, defence has not been able to elicit any circumstance by which their evidence can be said to be not trustworthy. Their evidence stands corroborated by the medical evidence also, because all these three witnesses have stated in their evidence that accused/appellant Brajesh attacked deceased Baijnath on his back and as per the evidence of Dr. D.K. Agrawal (PW-5) all the three stab injuries sustained by the deceased were on back of deceased Baijnath. Therefore, the evidence of these three witnesses cannot be disbelieved merely on the ground that they are closely related to the deceased. Moreover, knife, the weapon of offence, has been recovered at the instance of co-accused Keshav. Therefore, in view of the above evidence, it is established that accused Brajesh was the author of the crime in question.

15. Learned counsel for the appellant argued that the incident happened all of a sudden in a heat of passion. When Baijnath asked the accused as to why he threatened the friend of Raj Kumar to commit his murder, all of a sudden the accused attacked the deceased without having any intention to cause his death, during that period some altercation took place and in a heat of passion the accused attacked the deceased without having any intention to cause his death. Learned counsel placed reliance on the judgments of the Supreme Court in the matters of **Surinder Kumar**

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vs. Union Territory, Chandigarh reported in **(1989) 2 SCC 217** and **Gurnam Singh and another vs. State of Punjab** reported in **1995 Supp (3) SCC 743**.

16. On the other hand, Mr. D.K. Gwalre supported the judgment of the trial Court.

17. In order to appreciate the argument advanced by Mrs. Indira Tripathi, we have scrutinized the evidence of the prosecution witnesses and the material available on record. Case of the prosecution and evidence given by the prosecution witnesses is that Jairam, the complainant, along with his father Gulab Chand & uncle Baijnath were sitting at his shop in the night at about 9 – 10 p.m., at that time, accused Brajesh along with his associates was passing through the street abusing, on which deceased Baijnath asked Brajesh as to why he threatened to kill the friend of his son Raj Kumar, accused Brajesh started abusing and they threatened his uncle also. Thereafter, they ran after him and the accused attacked Baijnath with his knife, which he was carrying, on his back thrice. The deceased sustained three incised punctured wounds on back, the description of which is as follows: -

(i) Stab injury 3" below left shoulder in the size of 2" x ½" x 3" horizontal in shape extending up to thoracic;

(ii) Stab injury 5" below left shoulder in the size of 2" x ½" x 4" horizontal; and

(iii) Stab injury 1" right to the 10th thoracic vertebra 2" x ½" x cavity deep, injury to the lung ½" x ¼" x ½" and thoracic cavity was full of blood.

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	18. Above facts and evidence show that when the accused persons were passing through the street while abusing, Baijnath asked Brajesh & others as to why they are abusing and why they have threatened to kill the friend of Raj Kumar. Simply on saying this, accused Brajesh ran after Baijnath and stabbed thrice on the backside of Baijnath as a result of which Baijnath's lung was also punctured. Moreover Baijnath was without any weapon. Above evidence is suggestive of the fact that the deceased had not in any manner gave threatening to the accused persons or said anything whereby they were supposed to attack Baijnath that too on vital part of the body with a deadly weapon like knife repeatedly for three times which resulted into damaging of lung of the deceased and he succumbed to the injury sustained by him before he could reach the hospital. Above act of the accused suggests that the accused attacked the deceased mercilessly in cruel manner with intention to cause death. 19. In the matter of **Thangaiya v. State of Tamil Nadu** reported in **2005 Cri.L.J. 684**, the Apex Court held that intention of the accused can be ascertained by size of weapon used, the place where the assault took place, facts leading to assault and part of body where the blow was given. In the present case, the accused used knife that too on back side near lung and he repeatedly attacked thrice as a result of which lung was punctured which proved fatal. Therefore, intention of the accused to cause the death of Baijnath was writ large.	

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	20. As far as the judgments cited by learned counsel for the appellant is concerned, in **Surinder Kumar**'s case (supra), the kitchen of the complainant party was given to the accused party for use during marriage only and when possession of the kitchen was not returned by the accused party, the deceased & PW-2 entered the room of the appellant and uttered filthy abuses in the presence of latter's sister. Tempers ran high and on PW-2 taking out a pen knife, the appellant picked up the knife from the kitchen, ran towards PW-2 and inflicted a simple injury on his neck. The deceased intervened on the side of his brother PW-2 and in the course of the scuffle he received three injuries. The Court held that the appellant was entitled to Exception 4 to Section 300 of the I.P.C., because PW-2 and the deceased started abusing the accused in a filthy language that too in the presence of their sister and even PW-2 taking out a pen knife attacked the appellant. In these circumstances, the accused got infuriated and in a heat of passion picked up the knife from the kitchen which was lying there and attacked. Therefore, the Court held that Exception 4 to section 300 of the I.P.C. was applicable in this case. 21. Whereas, in the present case, the deceased simply asked the accused as to why he threatened to kill the friend of his son Raj Kumar and he said nothing more than that. The accused, in the first instance, abused and thereafter, attacked with a knife which he was carrying that too three times and co-accused Awdhesh caught hold of the deceased.	

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	22. As far as the other judgment in the case of **Gurnam Singh (supra)** is concerned, in that case also the accused attacked by kassi and gandasa. The incident took place in a sudden quarrel over the opening of an outlet. The Court held that the offence falls under Section 304 (Part I) of the I.P.C. and not under Section 302 of the I.P.C. 23. In the present case, there was no quarrel what to talk of sudden quarrel. The deceased simply asked the accused as to why he gave threatening to the friend of his son, there was nothing more than that and the accused who was carrying knife attacked the deceased. 24. Learned counsel for the appellant also cited the judgment delivered by the Supreme Court in the case of **The State of Bihar v. Mohammad Khursheed** reported in **AIR 1971 SC 2268**. In this case also, there was a clash between the accused and the deceased at the time of occurrence and the prosecution was unable to explain the origin and the manner in which the fight started. Therefore, the Apex Court held that the accused is entitled for the benefit of doubt, as such, the benefit was given to him and he was convicted under Section 304 Part-I of the I.P.C. 25. In the present case, as has been mentioned earlier, in fact, there was no quarrel between the accused persons and the deceased, the deceased simply asked the accused/appellant as to why he gave threatening to his son's friend, that infuriated the accused and he attacked the deceased with knife. Self-provocation without any	

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	kind of instigation by the deceased does not entitle the accused to take the benefit of Exception 4 to Section 300 of the I.P.C. 26. Therefore, the above three judgments cited by learned counsel for the appellant are distinguishable on facts and are of no help to the accused/appellant. 27. For the foregoing reasons, we do not find any substance in this appeal, same is liable to be dismissed and it is hereby dismissed. Sd/- L.C.BHADOO Judge Sd/- DHIRENDRA MISHRA Judge	
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